STATE OF MICHIGAN

COURT OF APPEALS

KOHL, HARRIS, NOLAN & MCCARTHY, P.C.,

Plaintiff-Appellee,

v

NEILL T. PETERS,

Defendant-Appellant,

and

LAW OFFICE OF NEILL T. PETERS, P.C.,

Defendant.

UNPUBLISHED
January 22, 2008

No. 275377
Lapeer Circuit Court
LC No. 05-036487-CZ

Before: Saad, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

In this attorney fee dispute, defendant Neill Peters appeals as of right the December 18, 2006 circuit court order denying his motion for summary disposition and granting judgment in favor of plaintiff law firm. We affirm.

Peters and his former law partner Malcom Harris formed the law firm of Harris & Peters, P.C. in 1993. As shareholders and employees of the corporation, Harris and Peters entered into a Memorandum of Buy-Sell Agreement and a Shareholder Employment Agreement. The parties agree that, pursuant to these contracts, if a shareholder voluntarily terminated his employment with the firm and took an unfinished contingency case, the terminating attorney would be obligated to pay the remaining shareholder(s) one-third of the collected attorney fee, plus costs incurred by the firm prior to the contingency case being removed by the terminating attorney.

In 1994, Konrad Kohl began working at Harris & Peters, P.C. as an independent contractor. While the firm name was changed to Kohl, Harris, and Peters, P.C. to reflect his involvement with the firm, Kohl did not become a shareholder or employee of the corporation. As such, he did not become a party to the Memorandum of Buy-Sell Agreement or the Shareholder Employment Agreement. Rather, pursuant to a separate contractual agreement he entered into with the firm, Kohl agreed to provide legal services on any of the firm's contingent fee cases in exchange for receiving 50 percent of the net attorney fee. This contractual fee-

splitting agreement was not reduced to writing, but was honored and implemented in practice over the years. According to Peters, as part of the contractual agreement, Kohl was assigned a 50 percent interest in each of the firm's contingent fee cases on which he worked.

In 1998, Kohl, Harris, and Peters, P.C. agreed to represent the Werthman Group on a claim of legal malpractice. Peters entered into a contingency fee agreement with the Werthman Group on behalf of the firm. Peters subsequently requested that Kohl work on the case and Kohl did so. In 2000, Peters terminated his employment with the firm and took the Werthman case with him, pursuant to the consent of his former partners. The Werthman Group substituted The Law Office of Neill T. Peters, P.C. as counsel, and Peters completed the case.

Following the case resolution, Peters filed an action against his former law firm[1] to confirm applicability of the 1993 Buy-Sell Agreement regarding the law firm's share of the attorney fee. In a February 2003 opinion and accompanying order, circuit court Judge Michael P. Higgins gave affect to the fee-splitting arrangement described in the Buy-Sell Agreement and Peters' Shareholder Employment Agreement. Pursuant to the order, Peters paid the firm one-third of the net contingency fee he collected in the Werthman case.

Peters' former partners created a new corporation in 2001, titled Kohl, Harris, Nolan & McCarthy, P.C. (KHNM). Kohl assigned his interest in the Werthman contingency fee to KHNM, which then filed suit against Peters in district court to recover Kohl's portion of the fee.[2] Peters moved for summary disposition. In July of 2003, visiting circuit court Judge Higgins denied Peters' motion for summary disposition and granted judgment in favor of KHNM, finding that Kohl was entitled to 50 percent of the net contingency fee Peters recovered in the Werthman case.[3] Peters appealed the judgment and the case was voluntarily dismissed. KHNM then filed suit against Peters in circuit court, and Peters again moved for summary disposition. In December of 2006, Judge Higgins, in his capacity as circuit court judge, denied Peters' motion for summary disposition and granted judgment in favor of KHNM for the same reasons articulated in district court.

Peters argues on appeal that the circuit court erred in granting judgment in favor of KHNM. Specifically, Peters claims that he is not obligated to compensate Kohl under the fee-splitting agreement between his former law firm and Kohl because he did not enter into the agreement in his individual capacity, and that Kohl is only entitled to 50 percent of what the firm received. We disagree. We review a grant or denial of summary disposition de novo on the

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[1] After Peters' departure, the firm name was changed from Kohl, Harris, Peters & Nolan, P.C. to Kohl, Harris, & Nolan, P.C.

[2] Although originally named as a defendant, Peters' law firm, The Law Office of Neill T. Peters, P.C., was eventually dismissed from the suit.

[3] The amount of judgment was reduced by that portion of Kohl's 50 percent fee that Peters had already paid to his former law firm in association with the Buy-Sell Agreement. In an October 31, 2003 Opinion and Order Denying Motion for Reconsideration, the court clarified that its ruling was based on the enforcement of a contract, not equitable relief.

basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we consider all of the evidence submitted by the parties in the light most favorable to the non-moving party. *Id*. at 119-120. Summary disposition should be granted only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120. "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

The construction and interpretation of a contract presents questions of law that we review de novo. *Saint Clair Medical, PC v Borgiel*, 270 Mich App 260, 264; 715 NW2d 914 (2006). The goal of contract construction is to determine and enforce the parties' intent based on the plain language of the agreement. *Id*. "It is axiomatic that if a word or phrase is unambiguous and no reasonable person could differ with respect to application of the term or phrase to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10)." *Id*., quoting *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). If reasonable minds could differ, however, a question of fact for the factfinder exists and summary disposition is inappropriate. *Id*.

We agree with the circuit court that the terms of Kohl's fee-splitting agreement with Harris & Peters, P.C. are unambiguous. It is undisputed that when Kohl began working with Harris & Peters, P.C., he was promised 50 percent of the net attorney fee collected in any contingency case on which he worked. Peters admits that, had he continued his employment with the firm, Kohl would have received 50 percent of the net contingency fee collected in the Werthman case. Peters' claim that he is now under no obligation to compensate Kohl for his work on the case is without merit. As a shareholder in the firm, Peters agreed to the fee-splitting arrangement with Kohl, and Peters requested Kohl's assistance on the Werthman case. When Peters terminated his employment with the firm and took the Werthman case with him, the existing contractual obligation to pay Kohl 50 percent of the net contingency fee continued and was not modified in any way. For this Court to find otherwise would destroy the intent of the contracting parties. See *Saint Clair Medical, PC, supra* at 264.

While no Michigan case law is directly on point, we note that a majority of jurisdictions treat a pending contingent-fee case taken by a terminating attorney as an *asset* of the originating firm and that, upon collection of the contingency fee, the terminating attorney has a continuing fiduciary duty in regard to fee splitting, and must comply with the terms of any applicable fee-splitting agreement. See e.g., *Santalucia v Sebright Transp, Inc*, 232 F3d 293, 299 (CA 2, 2000); *Vowell & Meelheim, PC v Beddow, Erben & Bowen, PA*, 679 So 2d 637, 640 (Ala, 1996), citing *Jewel v Boxer*, 156 Cal App 3d 171; 203 Cal Rptr 13 (1984) and *Fox v Abrams*, 163 Cal App 3d 610; 210 Cal Rptr 260 (1985). For that reason, we find that Peters mistakenly relies on cases involving shareholder immunity from liability on corporate *debts*. See e.g., *Burrows v Bidigare/Bublys, Inc*, 158 Mich App 175; 404 NW2d 650 (1987). In this case, Peters took a corporate asset (the Werthman case) from the firm, which remained subject to existing contractual agreements with others. When he took the case, Peters was required to honor the existing contractual obligation to compensate Kohl 50 percent of the collected fee, as nothing modified or obviated that agreement.

We are unpersuaded by Peters' remaining arguments. Peters argues that the circuit court erred in finding that the "dissolution" of Kohl, Harris, Peters, & Nolan, P.C. did not affect Kohl's right to recovery. We agree with Peters that the circuit court misstated the facts in this regard. It is undisputed that his former law firm did not dissolve when Peters left.[4] Nonetheless, it is apparent from the record that the circuit court understood the facts of the case and that its misstatement regarding the firm's dissolution had no bearing on its judgment.

Peters further argues that because Kohl ceased work on the Werthman case voluntarily, he was only entitled to compensation on the basis of quantum meruit, rather than under the fee-splitting agreement, or in unjust enrichment against Peters. This Court has found, however, that fee-splitting agreements in contingency cases are intended to eliminate the need for quantum meruit analysis and that reasonable fee-splitting agreements should be encouraged. See *McCroskey, Feldman, Cochrane & Brock, PC v Waters*, 197 Mich App 282, 287; 494 NW2d 826 (1992). Peters' reliance on *Polen v Melonakus*, 222 Mich App 20; 564 NW2d 467 (1997) is misplaced. Although the *Polen* Court properly found that "an attorney on a contingent fee arrangement . . . who rightfully withdraws, is entitled to compensation for the reasonable value of his services based upon quantum meruit, and not the contingent fee contract," that case did not discuss fee-splitting agreements among the attorneys, as is at issue here, and is, therefore, inapplicable. *Id*. at 24 (quotations and citations omitted). Furthermore, because Kohl was entitled to compensation on a contractual basis, we need not address his ability to recover under the equitable doctrine of unjust enrichment.

Affirmed.

/s/ Henry William Saad
/s/ Jane M. Beckering

[4] Albeit inactive, as of May 24, 2006 Peters' former law firm had not been dissolved.